UE E&C SANJIA (M) SDN BHD v. LEE JENG YUH & ANOR AND ANOTHER APPEAL

COURT OF APPEAL, PUTRAJAYA
HANIPAH FARIKULLAH JCA
AZIZAH NAWAWI JCA
HASHIM HAMZAH JCA
[CIVIL APPEAL NOS: J-02(NCVC)(W)-883-07-2020
& J-02(NCVC)(W)-885-07-2020]
7 SEPTEMBER 2021

CONTRACT: *Agreement – Sale and purchase agreement – Housing development – Delivery of vacant possession which ought to be completed within 36 months varied to 48 months – Whether parties to Schedule H agreement made pursuant to reg. 11 of Housing Development (Control and Licensing) Regulations 1989 could contract out of scheduled form – Whether Housing Controller has power to waive or modify provisions in Schedule H agreement – Whether agreements void for illegality – Contracts Act 1950, s. 24(a), (b), (e)*

LAND LAW: *Housing developers – Sale and purchase agreement – Delivery of vacant possession which ought to be completed within 36 months varied to 48 months – Whether parties to Schedule H agreement made pursuant to reg. 11 of Housing Development (Control and Licensing) Regulations 1989 could contract out of scheduled form – Whether Housing Controller has power to waive or modify provisions in Schedule H agreement – Whether agreements void for illegality – Contracts Act 1950, s. 24(a), (b), (e)*

The respondents ('plaintiffs') were purchasers of their respective units in a residential housing project ('project') developed by the appellant ('defendant'), a housing developer under the Housing Development (Control and Licensing) Act 1966 ('Act'). The plaintiffs in Suit 116 were the purchasers of unit A2-12-06 and the purchase price was RM868,068 where RM30,382.44 had already been paid to the defendant. A credit facility from United Overseas Bank ('UOB') for RM709,419 to finance the balance of the purchase price and the MRTA policy premium was obtained. As for Suit 117, the plaintiff was the purchaser of unit B3-11-01 and the purchase price was RM462,473 and RM18,060 had been paid to the defendant. Similarly, a credit facility from UOB was obtained to finance the balance of the purchase price and the MRTA policy premium. Sale and purchase agreements ('SPA') were executed by the plaintiffs with the defendant. Both SPAs were described as Schedule H agreements made pursuant to reg. 11 of the Housing Development (Control and Licensing) Regulations 1989 ('1989 Regulations'). Clauses 25 and 27 of the SPAs stated that vacant possession of the units was to be delivered to the plaintiffs and common facilities were to be completed by the defendant within 48 months from the date of the SPAs. Delivery of vacant possession and completion of the

common facilities were to be completed by 14 October 2019. On 13 June 2019, some four months prior to the completion date, the plaintiffs issued notices of termination of the SPAs to the defendant with immediate effect respectively. The ground of termination was an anticipatory breach of the fundamental terms of the SPAs. According to the plaintiffs, the defendant at the time had not completed even half of the project's construction. The plaintiffs also requested for the return of all monies paid towards the purchase price and for the defendant to compensate the plaintiffs for all costs and expenses incurred pursuant to the SPAs. There was no reply to the said notice hence the filing of the two suits by the plaintiffs in the High Court. The trial judge allowed the plaintiffs' claim. Dissatisfied, the defendant proceeded to file the current appeals. The plaintiffs raised a preliminary objection on the ground that the defendant's memorandum of appeals were vague and lacked particulars. The issues that arose were (i) whether any non-compliance by the defendant in the memorandum of appeals caused any substantial miscarriage of justice against the plaintiffs; and (ii) whether the SPAs were in breach of Schedule H to the 1989 Regulations and consequently rendered them to be illegal and unenforceable.

Held (dismissing appeals):

(1) The plaintiffs had not shown that they have suffered any miscarriage of justice through the alleged non-compliance by the defendant in its memorandum of appeals. The preliminary objection was purely raised on the point of technicality. The rules should be applied solely to advance the cause of justice and to prevent miscarriage of justice, and not to be used to defeat the primary purpose of a fair and just resolution of the matter between the parties. The plaintiffs' preliminary objection was dismissed. (paras 18 & 19)

(2) In Schedule H, cls. 25 and 29 provide that the delivery of vacant possession and completion of common facilities shall be completed within 36 months from the date of the agreement. However, under cls. 25 and 27 of the SPAs, the period of 36 months had been varied to 48 months. The agreement between the plaintiffs and the defendant was a special agreement, which was prescribed and regulated by statute. The parties therefore could not contract out of the scheduled form. The rationale is to protect home buyers against the developers. It is trite that parties to a Schedule H agreement could not contract out of the scheduled form. (paras 29, 31 & 32)

(3) The Housing Controller has no power to waive or modify any provision in the Schedule H agreement. The SPAs entered into between the plaintiffs and the defendant were clearly in contravention of the statutorily prescribed form in Schedule H. Section 24(a), (b) and (e) of the Contracts Act 1950 were applicable to the facts in the present case. Therefore, the SPAs were void for illegality. (paras 40-42)

(4) The SPAs were null and void from their inception because the Housing Controller had no power under the law to grant any extension of time on the delivery of vacant possession and completion of the common facilities beyond the 36 months period prescribed in Schedule H to the 1989 Regulations. Therefore, the trial judge had not erred in ordering the refund of all payments made by the plaintiffs to the defendant. It was only fair and just to the parties to be put in their original position as if the SPAs had never been executed. The amount of damages allowed by the trial judge were not disputed and was therefore affirmed. (paras 44, 45 & 48)

Case(s) referred to:

Ang Ming Lee & Ors v. Menteri Kesejahteraan Bandar, Perumahan Dan Kerajaan Tempatan & Anor And Other Appeals [2020] 1 CLJ 162 FC ***(refd)***

Chow Yee Wah & Anor v. Choo Ah Pat [1978] 1 LNS 32 PC ***(refd)***

Gan Yook Chin & Anor v. Lee Ing Chin & Ors [2004] 4 CLJ 309 FC ***(refd)***

Lori Malaysia Bhd v. Arab-Malaysian Finance Bhd [1999] 2 CLJ 997 FC ***(refd)***

Merong Mahawangsa Sdn Bhd & Anor v. Dato' Shazryl Eskay Abdullah [2015] 8 CLJ 212 FC ***(refd)***

OM Cahaya Mineral Asia Bhd v. Damansara Realty (Pahang) Sdn Bhd [2018] 5 CLJ 587 CA ***(refd)***

PP v. Mohd Radzi Abu Bakar [2006] 1 CLJ 457 FC ***(refd)***

S.E.A. Housing Corp Sdn Bhd v. Lee Poh Choo [1982] CLJ 355; [1982] CLJ (Rep) 305 FC ***(refd)***

Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case [2017] 5 CLJ 526 FC ***(refd)***

Sentul Raya Sdn Bhd v. Hariram Jayaram & Ors And Other Appeals [2008] 4 CLJ 618 CA ***(refd)***

Tan Kim Beng & Ors v. Datuk Yen Ying Pang @ Kenneth Yen Yin Pin & Ors [2012] 1 LNS 1307 CA ***(refd)***

UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor [2010] 9 CLJ 785 FC ***(refd)***

Veronica Lee Ha Ling & Ors v. Maxisegar Sdn Bhd [2009] 6 CLJ 232 FC ***(refd)***

Watt or Thomas v. Thomas [1947] AC 484 ***(refd)***

Legislation referred to:

Contracts Act 1950, ss. 24(a), (b), (e), 66

Housing Development (Control and Licensing) Act 1966, s. 24(2)(c), (e)

Housing Development (Control and Licensing) Regulations 1989, reg. 11(3), Schedule H

Rules of the Court of Appeal 1994, rr. 3A, 18(1)

For the appellant - Goh Tiong Sin; M/s SK Song

For the respondent - Jayabalan Raman Kutty & Nur Hidayah Hashim; M/s R Jayabalan

[Editor's note: For the High Court judgment, please see Lee Jeng Yuh & Anor v. UE E&C Sanjia (M) Sdn Bhd [2020] 1 LNS 1310 (affirmed).]

Reported by Suhainah Wahiduddin

JUDGMENT

Hashim Hamzah JCA:

Introduction

[1] For ease of reference, the parties to the present appeals shall be referred to, as they were, in the High Court.

[2] This is the hearing of the defendant's appeals in Civil Appeal No: J-02(NCvC)(W)-883-07-2020 and Civil Appeal No: J-02(NCvC)(W)-885-07-2020) against the decisions of the learned trial judge which were delivered on 25 June 2020 in Civil Suit No: JA-22NCvC-116-4 07-2019 ("Suit 116") and Civil Suit No: JA-22NCvC-117-07-2019 ("Suit 117") respectively.

[3] By way of an order of the High Court dated 24 October 2019, Suit 116 and Suit 117 were directed to be heard together before the learned trial judge. For the sake of convenience, the present appeals were consolidated and heard together before us.

Brief Facts

[4] The plaintiffs in both cases were the purchasers of their respective units in a residential housing project known as Sovereign Bay ("the project"). The project was developed by the defendant, a licensed housing developer under the Housing Development (Control and Licensing) Act 1966 (Act 118) ("the Act").

[5] The plaintiffs in Suit 116 were the purchasers of unit A2-12-06. The total purchase price of the said unit was RM868,068 where RM30,382.44 has already been paid to the defendant. A credit facility from United Overseas Bank ("UOB") for RM709,419 to finance the balance of the purchase price and the MRTA policy premium was already obtained.

[6] As for Suit 117, the plaintiff was the purchaser of unit B3-11-01. The purchase price of the said unit was RM462,473 and RM18,060 has been paid to the defendant. Similarly, a credit facility from UOB of RM393.101 was already obtained to finance the balance of the purchase price and the MRTA policy premium.

[7] Sale and purchase agreements have been executed by the plaintiffs with the defendant dated 15 October 2015 ("the SPA"). Both SPAs were described as Schedule H agreements made pursuant to reg. 11 of the Housing Development (Control and Licensing) Regulations 1989 ("the 1989 Regulations").

[8] Clauses 25 and 27 of the SPAs stated that vacant possession of the units was to be delivered to the plaintiffs and common facilities were to be completed by the defendant within 48 months from the date of the SPAs. In short, delivery of vacant possession and completion of the common facilities were to be completed by 14 October 2019.

[9] On 13 June 2019, some four months prior to the completion date, the plaintiffs through their solicitors, had issued notices of termination of the SPAs to the defendant with immediate effect respectively. As mentioned in the notices, the ground of termination was an anticipatory breach of the fundamental terms of the SPAs. According to the plaintiffs, the defendant at the time has not completed even half of the project's construction. The plaintiffs have also requested for the return of all monies paid towards the purchase price and for the defendant to compensate the plaintiffs for all costs and expenses incurred pursuant to the SPAs. There was no reply to the said notice, hence the filing of the two suits by the plaintiffs in the High Court.

[10] The matter went for a full trial. On 25 June 2020, the learned trial judge had allowed the plaintiffs' claim. Dissatisfied, the defendant proceeded to file the current appeals.

Law On Appeal

[11] It is trite that when a matter came up on appeal, an appellate court is required to determine whether or not the trial court had arrived at its decision or finding correctly based on the relevant law and established evidence. It is also trite that an appellate court will not generally intervene with the decision of a trial court unless the trial court is shown to be plainly wrong in arriving at its decision. A plainly wrong decision happens when the decision of the trial court is arrived at without judicial appreciation of the evidence (see *UEM Group Bhd v. Genisys Integrated Engineers Pte Ltd & Anor* [2010] 9 CLJ 785; [2010] MLJU 2225, *Chow Yee Wah & Anor v. Choo Ah Pat* [1978] 1 LNS 32, *Watt or Thomas v. Thomas* [1947] AC 484; and *Gan Yook Chin & Anor v. Lee Ing Chin & Ors* [2004] 4 CLJ 309; [2005] 2 MLJ 1).

[12] Bearing in mind the above position of the law, we now turn to consider the issues raised by the parties to the present appeals.

Preliminary Objection

[13] The plaintiffs raised a preliminary objection on the ground that the defendant's memorandum of appeals are vague and lack of particulars. According to the plaintiffs, the defendant's memorandum of appeals did not comply with r. 18(1) of the Rules of the Court of Appeal 1994 ("RCA 1994") since the defendant merely stated the decisions complaint against in general without specifying the error of law or of fact alleged to be wrongly decided.

[14] Rule 18(1) of the RCA 1994 states:

> The appellant shall prepare a memorandum of appeal setting forth **concisely and under distinct heads, without argument or narrative, the grounds of objection to the decision appealed against, and specifying the points of law or fact which are alleged to have been wrongly decided;** such grounds to be numbered consecutively. (emphasis added)

[15] Regardless of the above, we have in our mind what has been stated under r. 3A of the Rules of the Court of Appeal 1994 which reads:

> 3A. Preliminary objection on the ground of noncompliance shall not be allowed
>
> A Court or Judge **shall not allow** any **preliminary objection** by any party **only on the ground of non-compliance** of any of these Rules **unless** the Court of Judge is of the opinion that such non-compliance has **occasioned a substantial miscarriage of justice.** (emphasis added)

[16] Therefore, the issue is whether any non-compliance by the defendant in the memorandum of appeals causes any substantial miscarriage of justice against the plaintiffs?

[17] According to the plaintiffs, they were unable to respond to the appeal due to the vague and general complaints by the defendant in its memorandum of appeals. However, in the same submission, the plaintiffs were able to identify and submit with definite clarity on the pertinent issues raised by the defendant in its memorandum of appeal and in its submission.

[18] The plaintiffs, therefore, had not shown that they have suffered any miscarriage of justice through the alleged non-compliance by the defendant in its memorandum of appeals. Thus, we are of the opinion that the preliminary objection was purely raised on the point of technicality. We hold that the rules should be applied solely to advance the cause of justice and to prevent miscarriage of justice, and not to be used to defeat the primary purpose of a fair and just resolution of the matter between the parties (see *Tan Kim Beng & Ors v. Datuk Yen Ying Pang @ Kenneth Yen Yin Pin & Ors* [2012] 1 LNS 1307; [2013] 4 MLJ 437 (CA)).

[19] For the above reasons, we dismissed the plaintiffs' preliminary objection. We now turn to consider the merits of the appeals.

Issues

[20] The primary issue in the present appeals is whether the SPAs are in breach of Schedule H to the 1989 Regulations and consequently rendering them to be illegal and unenforceable.

[21] Another issue is whether in the alternative, the termination of the SPAs by the plaintiffs is valid.

Whether The SPAs Are Illegal And Unenforceable

[22] First and foremost, we find it pertinent to note at this juncture that the plaintiffs did not plead the issue of illegality. Even though the issue of illegality was not pleaded, the learned trial judge proceeded to take notice of the issue and subsequently determined the same.

[23] The approach taken by the learned trial judge was justified based on what has been decided by the Federal Court in *Merong Mahawangsa Sdn Bhd & Anor v. Dato' Shazryl Eskay Abdullah* [2015] 8 CLJ 212; [2015] 5 MLJ 619. After a thorough analysis on the relevant authorities, Jeffrey Tan FCJ in delivering the judgment of the court comprehensively concluded that:

> Clearly, therefore, **courts are bound at all stages to take notice of illegality,** whether *ex facie* or which later appears, **even though not pleaded,** and to **refuse to enforce the contract.** (emphasis added)

[24] We are of the considered view that the learned trial judge was correct in her approach. We see no reason to disturb the same.

[25] Next, according to the learned trial judge, the basis of the illegality is the non-compliance in the period of the delivery of vacant possession and the completion of common facilities stipulated in the SPAs with the prescribed period in Schedule H to the 1989 Regulations.

[26] At the outset, s. 24 of the Act empowers the Minister to make regulations for the purpose of carrying into effect the provisions of the Act. Specifically, s. 24(2)(c) and (e) of the Act states that the regulations may prescribe the form of contracts which shall be used by a licensed housing developer, his agent, nominee or purchaser both as a condition of the grant of a licence under this Act or otherwise, and regulate and prohibit the conditions and terms of any contract between a licensed housing developer, his agent or nominee and his purchaser.

[27] In the exercise of the powers conferred to the Minister under s. 24 of the Act, the Minister made the 1989 Regulations which came into force on 1 April 1989.

[28] Regulation 11 of the 1989 Regulations states that:

> **Every** contract of sale for the sale and purchase of a housing accommodation together with the subdivisional portion of land appurtenant thereto shall be in the form prescribed in Schedule G and where the **contract of sale is for the sale and purchase of a housing accommodation in a subdivided building,** in the form of a parcel of a building or land intended for subdivision into parcels, as the case may be, **it shall be in the form prescribed in Schedule H.**
>
> (emphasis added)

[29] In Schedule H, cls. 25 and 29 provide that the delivery of vacant possession and completion of common facilities shall be completed within 36 months from the date of the agreement. However, in the present case, it can be seen under cls. 25 and 27 of the SPAs that the period of 36 months above has been varied to 48 months.

[30] On this issue, we are guided by the Federal Court in *Veronica Lee Ha Ling & Ors v. Maxisegar Sdn Bhd* [2009] 6 CLJ 232; [2011] 2 MLJ 141 where Gopal Sri Ram FCJ in delivering the judgment of the court held that:

> Now, cl. 23 is part of a statute based contract. **In this country, the relationship between a house-buyer and a licensed developer is governed by the Housing Developers legislation.** Its object is to protect house buyers against developers. **A developer must execute the agreement set out in the schedule to the relevant subsidiary legislation. He cannot add other clauses in it.** (emphasis added)

[31] In short, the agreement between the plaintiffs and the defendant in the present case is a special agreement, which is prescribed and regulated by statute. The parties therefore cannot contract out of the scheduled form (see *Sentul Raya Sdn Bhd v. Hariram Jayaram & Ors And Other Appeals* [2008] 4 CLJ 618; [2008] 4 MLJ 852 (CA)). The rationale is to protect home buyers against the developers (see *S.E.A. Housing Corp Sdn Bhd v. Lee Poh Choo* [1982] CLJ 355; [1982] CLJ (Rep) 305; [1982] 2 MLJ 31 (FC)).

[32] In a nutshell, it is therefore trite that parties to a Schedule H agreement cannot contract out of the scheduled form.

[33] In reply to this issue, the defendant had referred to an extension of time granted by the Housing Controller in its letter dated 20 May 2015, some five months prior to the execution of the SPAs, which reads:

> ... setelah meneliti permohonan tuan untuk meminda Jadual H (Perjanjian Jual Beli) di bawah Peraturan 11, Peraturan-Peraturan Pemajuan Perumahan (Kawalan dan Pelesenan) 1989, Jabatan ini hanya meluluskan lanjutan serahan milikan kosong dan penyiapan kemudahan bersama selama 12 bulan iaitu daripada 36 bulan kepada 48 bulan sahaja.

[34] However, in light of the recent Federal Court case of *Ang Ming Lee & Ors v. Menteri Kesejahteraan Bandar, Perumahan Dan Kerajaan Tempatan & Anor And Other Appeals* [2020] 1 CLJ 162; [2020] 1 MLJ 281, reg. 11(3) of the 1989 Regulations was held to be *ultra vires* of the Act. As a result, the Controller has no power to waive or modify any provisions in the Schedule H agreement. The relevant part of the judgment reads:

> [40] The Act being a social legislation designed to protect the house buyers, the interests of the purchasers shall be the paramount consideration against the developer. *Parliament has entrusted the Minister to safeguard the interests of the purchasers and the Minister has prescribed the terms and conditions of the contract of sale as per Schedule H.* We find *no contrary indication* in the language, scope or object of the Act that such duty to safeguard the interests of the purchasers *may be delegated* to some other authority ...
>
> ... [60] On the above analysis, we hold that the *Controller has no power to waive or modify any provision in the Schedule H Contract of Sale* because s. 24 of the Act does not confer power on the Minister to make regulations for the purpose of delegating the power to waive or modify the Schedule H Contract of Sale to the Controller. And it is not open to us to read into the section an implied power enabling the Minister to do so. We consequently hold that *reg. 11(3) of the Regulations, conferring power on the Controller to waive and modify the terms and conditions of the contract of sale is ultra vires the Act.* (emphasis added)

[35] The defendant had attempted to distinguish the facts in *Ang Ming Lee* (*supra*) from the facts in the present case. According to the defendant, the housing developer in *Ang Ming Lee* (*supra*) had unilaterally obtained the extension from the Housing Controller after the sale and purchase agreement has been executed whereas in the present case, the extension was approved by the Housing Controller before the SPAs were executed and the parties were deemed to have consented to the extended period stipulated in the SPAs.

[36] We disagree with the defendant on this issue. The decision of the Federal Court in *Ang Ming Lee* (*supra*) is clear that the Housing Controller has no power whatsoever to waive and modify the terms and conditions of the scheduled agreement in the first place. Therefore, the issue of whether the approval is obtained before or after the SPAs have been executed is not relevant.

[37] With regard to the issue that parties have consented to the extended period when they executed the SPAs, the law is trite as discussed above, the parties are never at liberty to contract out of the scheduled form. As such, we also find this issue to be without any merit.

[38] Next, there is nothing expressly mentioned in *Ang Ming Lee* (*supra*) regarding the prospectivity of the said decision. Therefore, the decision of the Federal Court in *Ang Ming Lee* (*supra*) operates retrospectively (see *PP v. Mohd Radzi Abu Bakar* [2006] 1 CLJ 457; [2005] 6 MLJ 393 (FC) and *Semenyih Jaya Sdn Bhd v. Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526; [2017] 3 MLJ 561 (FC)).

[39] In short, the decision in *Ang Ming Lee* (*supra*) which was delivered on 26 November 2019, is applicable retrospectively to the facts in the present case.

[40] Since it has been held by the Federal Court that the Housing Controller has no power to waive or modify any provision in the Schedule H agreement, the SPAs entered into between the plaintiffs and the defendant were clearly in contravention of the statutorily prescribed form in Schedule H.

[41] We, therefore, agree with the learned trial judge that s. 24(a), (b) and (e) of the Contracts Act 1950 (Act 136) are applicable to the facts in the present case. The relevant provision reads:

> Section 24. What considerations and objects are lawful, and what not.
>
> The consideration or object of an agreement is lawful, unless:
>
> (a) it is forbidden by a law;
>
> (b) it is of such a nature that, if permitted, it would defeat any law;
>
> (c) it is fraudulent;

(d) it involves or implies injury to the person or property of another; or

(e) the court regards it as immoral, or opposed to public policy.

In each of the above cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

[42] We find therefore that the SPAs are void for illegality. The effect of a void contract can be seen under s. 66 of the Contracts Act 1950 which reads:

Section 66. Obligation of person who has received advantage under void agreement, or contract that becomes void.

When an agreement is discovered to be void, or when a contract becomes void, **any person who has received any advantage under the agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it.** (emphasis added)

[43] The relief of restitution under s. 66 of the Contracts Act 1950 is subject to the exception that the parties were not aware of the illegality at the time when the agreement was entered into (see *Lori Malaysia Bhd v. Arab-Malaysian Finance Bhd* [1999] 2 CLJ 997 (FC) and *OM Cahaya Mineral Asia Bhd v. Damansara Realty (Pahang) Sdn Bhd* [2018] 5 CLJ 587 (CA)).

[44] As correctly found by the learned trial judge, the plaintiffs were not aware of the illegality as can be seen in their respective witness statements. As for the defendant, the decision in *Ang Ming Lee* (*supra*) came much later, though it operates retrospectively. We are of the considered view that it is only fair and just to the parties in the present appeals to be put in their original position as if the SPAs had never been executed.

[45] The learned trial judge had allowed the plaintiffs' claim for restitution of all the expenses reasonably incurred for the purchase of the said housing units. The amount of damages allowed by the learned trial judge were not disputed in the present appeal and is therefore affirmed.

Alternative Issue: Whether The Termination Of The SPAs By The Plaintiffs Are Valid

[46] Since we have already found that the SPAs were void for illegality for reasons set out above, the issue regarding the validity of the plaintiffs' termination of the SPAs no longer arises for consideration.

Conclusion

[47] In conclusion, for reasons enumerated above, upon careful perusal of the appeal records and after hearing the submission by all parties to the present appeal, we have come to a unanimous decision that there is no merit in the defendant's appeals.

[48] To summarise, we are of the view that the SPAs are null and void from their inception because the Housing Controller has no power under the law to grant any extension of time on the delivery of vacant possession and completion of the common facilities beyond the 36 months period prescribed in Schedule H to the 1989 Regulations. Therefore, the learned trial judge has not erred in ordering the refund of all payments made by plaintiffs (purchasers) to the defendant (developer).

[49] We hereby order that:

(i) The defendant's appeals are dismissed with costs and the High Court's decision in both cases affirmed; and

(ii) Costs of RM10,000 to the plaintiffs for each appeal subject to the allocator.